IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

Civil Writ Petition No. 5079 of 2001
Date of Decision: 1.11.2006

M/s Lord Krishna Education Society (Regd.) ..Petitioner

Versus

State of Haryana and another ..Respondents

CORAM:- **HON'BLE MR. JUSTICE H.S.BHALLA**

Present:- Mr. P.S.Saini, Advocate,
for the petitioner.

Mr. Ajay Gulati, Assistant Advocate General,
Haryana for the respondents.

**H.S.BHALLA, J.**

Petitioner-Society has knocked the door of this Court by filing the petition under Article 226 of the Constitution of India by virtue of which it seeks direction against the respondents for the refund of Rs.2,41,272/- along with interest at the rate of Rs. 12 per cent per annum, which was deposited by it under protest on account of the scrutiny fee calculated at the rate of Rs. 10/- per square meter in pursuance of notification dated 1.10.1999 (Annexure P-5).

The other facts required to be noticed for the disposal of this petition are that the petitioner is a Society registered under the Societies Act and its President was duly authorized vide resolution dated 15.9.2000 passed by the Executive Committee of the Society to file the present petition. The petitioner-Society submitted an application dated 24.6.1998 seeking permission to use the land for raising additional construction for residential purpose in addition to the building existing in the school run by it. This application was returned by the District Town Planner, Karnal and vide letter dated 2.7.1998, the petitioner was directed to comply with the rule 26-

A of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (hereinafter referred to as “the Rules of 1965”). It has been further averred in the petition that after completing all the formalities, the petitioner-Society again submitted an application to the District Town Planner, Karnal on 27.7.1998. This application was recommended by the District Town Planner, Karnal, to respondent No.2, i.e., the Director, Town and Country Planning, Haryana. Respondent No.2 passed the refusal order for change of land use vide letter dated 22.10.1998 and the petitioner-society was informed that since the land falls in the agricultural zone of the controlled area, the proposed use is not permissible. Aggrieved against this order passed by respondent No.2, petitioner-Society filed a statutory appeal before respondent No.1, which was allowed by the Commissioner and Secretary to Government of Haryana vide order dated 5.7.1999. After the order was passed by the appellate authority, the letter for grant of permission was not issued by respondent No.2 and in the meantime, the Government of Haryana amended rules of 1965 vide notification dated 1.10.1999 and substituted the words “an application in writing to the Director” with the words “an application in writing along with scrutiny fee at the rate of Rs.10/- per square meter in the form of bank draft to the Director.” It is further pointed out in the petition that before amendment of the Rules of 1965, no scrutiny fee was chargeable and only application was required to be submitted. Later on, permission was granted for change of land use for the construction of building for residential Senior Secondary School over an area measuring 28858 sq. meters on certain terms and conditions contained in the letter dated 1.12.1999. The petitioner-Society deposited scrutiny fee calculated at the rate of Rs.10/- per square meter under protest vide two demand drafts dated 9.12.1999 and it was also conveyed to the respondents by the petitioner that scrutiny fee is not

applicable to its case as the application for change of land was submitted as back as on 27.7.1998. The petitioner-Society approached the office of respondent No.2 for the refund of the excess amount of Rs.2,41,272/-, which was got deposited under the amended Rules of 1965. The petitioner also served a legal notice dated 11.12.2000 vide which the petitioner requested that the said amount deposited through two demand drafts be refunded and since no action was taken by the respondents, this necessitated the filing of the present petition.

The petition was contested by the respondents and through their written statement, it was pointed out that the application of the petitioner for the grant of permission for change of land use was under consideration on 1.10.1999, when the notification for charging scrutiny fee of Rs.10/- per square meter was issued by the Government of Haryana and as such, the petitioner is liable to pay scrutiny fee for scrutinizing its application and the same was charged from the petitioner in accordance with rules. It is further pointed out that the order dated 5.7.1999 passed by respondent No.1 was received in the office of respondent No.2 on 25.7.1999 and thereafter, the case of the petitioner-Society for grant of permission for change of land use was considered in the office of respondent No.2 and it was found that the petitioner has applied for an area of 28858 sq.yards, whereas the District Town Planner, Karnal, in his report, has shown the area of 28868 sq.yards and therefore, in order to clarify the difference of area, the District Town Planner, Karnal, was requested vide letter dated 30.7.1999 to clarify the position, but respondent No.2 did not receive any communication from the office of the District Town Planner, Karnal as also the petitioner. Therefore, letter dated 7.9.1999 was issued to the petitioner directing him to submit the copy of mutation as well as demarcation report of the requested land, so that the exact area may be ascertained for grant of permission for the

change of land use. It is further pleaded that the petitioner, vide letter dated 13.9.1999, submitted a copy of mutation and intimated that the land in question for the change of land use is required as 28858 sq.yards. After completion of all formalities, the case of the petitioner-Society for grant of permission was submitted to the government for setting up of residential Senior Secondary School on the land measuring 28858.05 sq.yards and meanwhile, the government, vide notification dated 1.10.1999, amended the provisions of rule 26-A of Rules 1965, whereby the applicant seeking permission for change of land use is required to pay scrutiny fee at the rate of Rs.10/- per sq. meter. It is further categorically pleaded in the reply that as the application of the petitioner-Society was under scrutiny on 1.10.1999, therefore, it was decided to levy scrutiny fee and by denying the other assertions raised in the petition, it was prayed that the present petition be dismissed, as no case for the refund of the amount is made out.

I have herd the learned counsel for the parties on either side and have also gone through the record of the case.

It is crystal clear from the record that the entire case of the petitioner revolves around notification dated 1.10.1999 and the order of the appellate authority dated 5.7.1999. In order to appreciate the point involved in the present petition, it is necessary to reproduce the operative part of the order of the appellate authority, which runs as under:-

> " I have perused the record and heard both sides at length. In view of the fact that permission has already been granted earlier by the Director, Town and Country Planning for setting up the school at this very site, it would be inappropriate to reject the application for extension of the school on the ground that the proposed use is not permitted in the development plan. The ground on which the earlier permission was granted holds

true in the context of the second application also. Non-justification of requirement and non-completion of earlier project are nowhere mentioned as the grounds of rejection of the application. I, therefore, accept the appeal and direct the Director, Town and Country Planning, Haryana to grant permission for change of land use for setting up of a hostel and expanding the school facilities on land comprising of khasra No.11/18/2 (p), 19 (p), 22 (p) & 23/1 of village Mangalpur situated in controlled area of Karnal town."

A perusal of the order of the appellate authority clearly spells out that the government directed the Director, Town and Country Planning, Karnal to grant permission for change of land use for expansion of the school and for setting up a hotel and it is an admitted case of both the parties that notification was issued on 1.10.1999 after the passing of the order of the appellate authority. There is no dispute with regard to the amendment of the Rules of 1965, which were amended through notification mentioned above and as per this amendment, an application was required to be filed with scrutiny fee at the rate of Rs.10/- per sq.meter in the form of bank draft to the Director. It is conceded by the learned counsel for the respondents that before amendment of the Rules of 1965, at the time of filing of the application, no scrutiny fee was chargeable and only an application was required to be submitted as per the form given in Annexure P-1 attached by the petitioner with the writ petition. The record further spells out that the petitioner had submitted an application as per the requirement of Rule 26-A of the Act on 27.7.1998, which is clear from the order passed by the Director-respondent No.2 dated 22.10.1998 (Annexure P-2). After the acceptance of the appeal and passing of the order by respondent No.1 on 5.7.1999, the competent authority was required to pass an order

granting permission to the petitioner for change of land use for construction of hostel, but no such order was passed at the earliest and respondent No.2 issued the letter regarding permission as if it was being granted afresh and in fact, respondent No.2 had already declined the request of the petitioner vide its order dated 22.10.1998 (Annexure P-2) and now permission was being granted on acceptance of appeal filed by the petitioner before respondent No.1 and in such like circumstances, when there was no fault on the part of the petitioner-Society and it had submitted an application after completing all the formalities before the issuance of the notification dated 1.10.1999, then in that event, scrutiny fee was not required to be paid by the petitioner, as the same was not chargeable at the time of filing of the application. The order of the appellate authority clearly spells out that while accepting the appeal, it was held in the order that the ground on which earlier permission was granted, has not, at all, been noticed and the earlier project has no-where been mentioned in the grounds vide which application was rejected and on this short ground alone, order dated 22.10.1998 passed by respondent No.2 was reversed by the appellate authority and the petitioner was granted permission and while passing the order dated 5.7.1999 (Annexure P-3), the appellate authority directed respondent No.2 to pass a formal order in pursuance of his order dated 5.7.1999 and if no formal order was passed by the competent authority, i.e., the Director, Town and Country Planning before amending the rules, the petitioner-Society cannot be called upon to pay the scrutiny fee while granting permission to him on the basis of the order passed by the appellate authority on 5.7.1999. The petitioner-Society in order to avoid any further complication in the matter, deposited the amount under protest in response to the amended rules, which he was not required to pay. In view of all this, the case of the petitioner does not fall within the ambit of the amended rules and it is

unfortunate that after the issuance of a legal notice, no action was taken by the competent authority for the refund of the amount and the respondents now also are contesting the claim of the petitioner and in fact, the government, in all morality and justice, has taken up such a plea to defeat the claim of a citizen. It is high time for the public authorities to adopt a practice of not relying upon technical pleas for the purpose of defeating legitimate claims of the citizens. Of course, if public authority or government takes up a technical plea, the Court has to decide it and if the plea is well founded, it is to be upheld by the Court, but the government should not take up such technical pleas in order to defeat the rights of the citizens. In the instant case, the claim of the petitioner-society was a just claim, particularly when it had filed its application prior to the issuance of a notification and then again permission was granted to it by the appellate authority before the issuance of notification and the Director, respondent No.2, was only required to pass a formal order in pursuance of the order dated 5.7.1999 passed by respondent No.1, but even then, the formal permission was delayed for the reasons best known to the Director till October, 1999 and on the issuance of the notification dated 1.10.1999, the petitioner-Society was called upon to pay scrutiny fee at the rate of Rs. 10/- per sq. meter in the form of bank draft, which was paid by it under protest. In view of all this, it is, ipso facto, clear that the amended rule 26-A of Rules of 1965 cannot be applied with retrospective effect and acceptance of appeal amounts to grant of permission to the petitioner for change of land use and in fact, respondent No. 2 exceeded his jurisdiction by directing the petitioner-Society to deposit scrutiny fee, which was required to be deposited in case of application to be submitted after coming into force of the amendment.

For the reasons stated above, the petition is allowed. Respondents are directed to refund the petitioner Society a sum of

Rs.2,41,272/- deposited as scrutiny fee with them, along with interest at the rate of 6% per annum, within a period of 60 days from the date a certified copy of this order is received. In case the amount so calculated is not refunded within the stipulated period, in that event, the petitioner-Society shall be entitled to interest at the rate of Rs. 9% per annum from the date of deposit of the same till its realisation.

1.11.2006 ( H.S.BHALLA )
VK JUDGE